

**IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION**

CIVIL NO. 3:98CV394

**CALVIN R. LUCKEY, and wife PEGGY)
G. LUCKEY; THEODORE BALLARD,)
JR.; FLOYD J. BOWMAN; WILLIE J.)
BURT, JR.; CLEMENT KEENE, and)
wif BARBARA JO DEATHERAGE)
KEENE; JUDY HORNE MARTIN,)
Individually and as Executrix of the)
Estate of Ray E. Martin, Deceased;)
GENE A. SHIRES, and wife HELEN)
SHIRES; JACKSON J. SMITH, and)
wife CAROLYN S. SMITH; JOHN)
WESLEY SMITH, and wife BETTY M.)
SMITH; ROGER FRANKLIN THOMAS,)
and wife ELLA SHINN THOMAS;)
DONNIE BAILEY; MARGARET A.)
BIGHAM, Individually and as)
Personal Representative of the)
Estate of Rothelle E. Bigham,)
Deceased; HAZEL S. BOONE,)
Individually and as Executrix of the)
Estate of Billy H. Boone, Deceased;)
RAYMOND L. MOORE; HAZEL B.)
MULLIS, Individually and as)
Executrix of the Estate of Jerry R.)
Mullis, Deceased; JIMMY W. NEAL,)
SR., and wife DOREEN K. NEAL;)
JOHN A. NOBLE, III, and wife)
WENDY ROBIN HASTINGS NOBLE;)
J. AUBREY SAUNDERS, and wife)
GEORGIA SMITH SAUNDERS;)
ROGER D. SMITH, and wife MARGIE)
P. SMITH; WILLIAM E. SMITH;)**

WALTER D. THOMPSON; RONNER)
 BYERS, and wife FRANCES W.)
 BYERS; RICHARD ALLEN JONES,)
 and wife JUDY ANN FINK JONES;)
 TONY E. ROGERS, and wife)
 PATRICIA LaDONNE C. ROGERS;)
 KENNETH G. SMITH, and wife)
 MARGARET SMITH; DAVID R.)
 TURNER; DAVID R. WHITESIDE, SR.,)
 and wife LINDA L. WHITESIDE;)
 VICTOR E. YOUNT; SYLVIA L.)
 JOHNSON, Executrix of the Estate of)
 Clarence Luckey, Sr., Deceased;)

Vs.)

ORDER

ASBESTOS CLAIMS)
 MANAGEMENT CORPORATION;)
 CLEAVER BROOKS; CROWN CORK)
 & SEAL COMPANY, INC.; THE)
 FLINTKOTE COMPANY; FOSTER)
 WHEELER CORPORATION;)
 GARLOCK, INC.; GENERAL)
 ELECTRIC COMPANY;)
 GEORGIA-PACIFIC CORPORATION;)
 NORTH BROTHERS, INC.;)
 OWENS-ILLINOIS, INC.; RAPID)
 AMERICAN CORPORATION; D. B.)
 RILEY CORPORATION; and)
 CBS CORPORATION,)

Defendants.)

THIS MATTER is before the Court *sua sponte* to clarify certain rulings issued during a pretrial conference conducted on December 12, 2006.

Plaintiffs' counsel have identified five groupings of Plaintiffs for trial in April 2007.¹ Counsel request that trial commence as to Group 1 to be followed sequentially by Groups 2 through 5 until all of the 33 individual Plaintiffs' cases have been tried. The individual Plaintiffs and the Group to which each has been assigned are as follows:

Group 1 involving exposure at a Duke Power facility:

No individual Plaintiffs in this case.

Group 2 involving exposure at a textiles facility:

No individual Plaintiffs in this case.

Group 3 involving exposure at a textiles facility:

Jimmy Neal, and his wife, Doreen
David R. Turner

Group 4 involving exposure at a Duke Power facility:

David r. Whiteside, and his wife, Linda

Group 5 involving exposure at a textiles facility:

Theodore Ballard, Jr.

¹The Court recognizes that the groupings contain named Plaintiffs from other cases, such as 5:98cv92 and 1:00cv33. The purpose of this Order is to address only the Plaintiffs named in this action, 3:98cv394.

These groupings by the Plaintiffs' counsel have left ungrouped the following individual Plaintiffs²:

Floyd Bowman
Willie Burt, Jr.
Clement Keene, and his wife, Barbara Jo
Ray Martin, deceased
John Smith, and his wife, Betty
Donnie Bailey
Rothelle Bigham, deceased
Raymond Moore
John Noble, and his wife, Wendy
J. Aubrey Saunders, and his wife, Georgia
Walter Thompson
Ronne Byers, and his wife, Frances
Richard Jones, and his wife, Judy
Tony Rogers, and his wife, Patricia
Kenneth Smith, and his wife, Margaret
Victor Yount
Clarence Luckey, Sr., deceased

The Court finds the following Defendants remain in the action:

Asbestos Claims Management Corporation
Cleaver Brooks
Crown Cork & Seal
Flintkote

² Plaintiffs Calvin and Peggy Luckey, Hazel Boone, Individually and as Executrix of the Estate of Billy Boone, Hazel Mullis, Individually and as Executrix of the Estate of Jerry Mullis, Jackson and Carolyn Smith, and Roger and Margie Smith were scheduled for trial in November 2005 and their cases were reported as settled. Likewise, Plaintiffs Gene and Helen Shires, William Smith, and Roger and Ella Thomas were scheduled for trial in October 2006 and their cases were reported as settled. However, dismissals for these Plaintiffs remain outstanding.

Foster Wheeler Corporation
Garlock, Inc.
General Electric
Georgia Pacific Corporation
North Brothers, Inc.
Owens-Illinois, Inc.
Rapid American Corporation
D. B. Riley, Inc.
CBS Corporation, f/k/a Westinghouse

During the pretrial conference, counsel informed the Court that out of the above Defendants, the only ones remaining in the action are A. W. Chesterton, Inc., Cleaver Brooks, Crown Cork & Seal, and North Brothers, Inc. However, the court records show that A. W. Chesterton was terminated as a named defendant in November 2005.

The Court has the following questions which the parties are to address by written pleading to be filed with the Court. Plaintiffs' counsel shall respond within 10 business days and defense counsel shall respond within 10 business days after the Plaintiffs' response.

1. Is it possible to add any one or more of the remaining 17 Plaintiffs to any one or more of the Groups 1 through 5?
2. What Defendants remain in the action for trial?

3. If the remaining 17 Plaintiffs cannot be added to the groups presently set, what grouping of these remaining Plaintiffs is proposed and what trial date is requested?

IT IS, THEREFORE, ORDERED that on or before **DECEMBER 26, 2006**, the Plaintiffs shall respond to the interrogatories above.

IT IS FURTHER ORDERED that on or before **JANUARY 5, 2007**, the Defendants shall file response to the interrogatories above.

IT IS FURTHER ORDERED that the first group of Plaintiffs, in final form which will be set by the Court after the parties' responses are reviewed, are hereby **CALENDARED** for trial to begin on April 9, 2007, and continuing group by group for a three week term of Court.

IT IS FURTHER ORDERED that dismissals and/or consent judgments be filed as to the Plaintiffs whose cases were settled from the November 2005 and October 2006 trial calendars within 30 days from entry of this Order.

Signed: December 15, 2006



Lacy H. Thornburg
United States District Judge

